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**REMARKS****Comments Regarding Interview Summary Attached to Office Action Dated October 25, 2004**

A telephonic interview took place on October 8, 2004. In advance of this interview, Applicant provided a draft Declaration Under 37 CFR 1.132 providing evidence in support of Applicant's position that the requirements of 35 USC 112, first paragraph, are satisfied by the present disclosure. At the outset of the interview, Examiner Mitchell agreed that this was the case and offered an option for withdrawal of the outstanding non-final action and the issuance of a substitute non-final action. In order to expedite prosecution, Applicant elected the withdrawal option and is now in receipt of the substitute non-final Office Action to which this paper is responsive.

One remark in the Continuation Sheet attached to the Examiner's Interview Summary was not clear to Applicant. Specifically, Applicant disclosed embodiments in which the plug of filler material is attached to the impact surface. Applicant notes that the impact surface has no sides or bottom, it is merely a planar surface located on the head of the driven fastener. This issue was discussed in a personal interview on November 10, 2004 which is summarized below.

**Comments Regarding Interview Summary Dated November 10, 2004**

On November 10, 2004, a personal interview was conducted at the United States Patent Office. An Interview Summary was prepared by Examiner Mitchell and accurately reflects the substance of the interview. A draft Amendment was used as a framework for discussion and the distinctions set forth below with respect to US Patent Nos. 5,772,379 and 3,469,490 were discussed. Examiner Mitchell suggested amending claims to make clear that the plug of filler material is attached directly to the impact surface. Additionally, art cited in the International Search Report including US Patent Nos. 3,357,296 and 2,528,288 were discussed. Language relating to the size and shape of the filler material was proposed and agreement was reached.

**Rejection Under 35 USC 102(b)**

Claims 1, 3, 6-10, 21, 22, 24 and 27-29 have been rejected under 35 USC 102(b) as being anticipated by Evensen (US Patent No. 5,772,379). More specifically, the Patent Office states that:

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Evensen Figs 1, 2 and 7 teaches a fastener (10) comprising a body with an impact surface (14) and a plug of filler material (18) joined to said impact surface. The method of providing a fastener body and joining a plug to said impact surface is inherently taught by the apparatus, as an item that is shown joined to a second item has inherently been joined to the second item.

This rejection is respectfully traversed. Evensen does not teach a plug of filler material joined to the impact surface. If the filler material were joined to the impact surface, the tool or device delivering the driving force would necessarily make contact with the filler material, and not the impact surface. This is the case with respect to Applicant's invention, but is not the case with respect to the Evensen invention. To the contrary, Evensen teaches a filler material disposed between leg portions of a staple in contact with the lower surface (not the impact surface) of the head of the staple. In none of the Evensen embodiments is the filler material attached to the impact surface.

Claims 1, 2, 5, 6, 7, 9, 11, 12, 15-18, 20-23, 26, 27 and 29 have been rejected under 35 USC 102(b) as being anticipated by Pearce Jr. (US Patent No. 3,469,490). In response to this rejection, Applicant's claims have been amended to limit their scope to driven fasteners (e.g., nails and staples). Support for this limitation is found throughout the specification. The cited Pearce Jr. reference relates instead to mechanical fasteners (e.g., screws, nuts and bolts, rivets, studs, etc.). The head of a mechanical fastener does not, in use, extend below the surface of a work piece. This is made clear in column 2, lines 26-29 of the Pearce Jr. patent which is set forth below, in pertinent part, for convenience.

More specifically, the invention concerns a mechanical fastener having a shank portion for penetrating surfaces to be joined and a head portion drawn into abutting contact with one of said surfaces as the fastener is tightened ...

It is respectfully submitted that the teaching of the Pearce Jr. patent is irrelevant to the problem addressed by Applicant as Applicant's invention relates only to driven fasteners.

#### Rejection Under 35 USC 103(a)

Claim 13 has been rejected under 35 USC 103(a) as being unpatentable over Pearce Jr. (U.S. Patent No. 3,469,490) in view of Evensen (U.S. Patent No. 5,772,379). This rejection is respectfully traversed for the reasons discussed above in connection with rejections grounded in

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35 USC 102(b). More specifically, the combination of references does not teach or suggest a plug of filler material attached to the impact surface of a driven fastener.

Claims 4, 14 and 25 have been rejected under 35 USC 103(a) as being unpatentable over Pearce Jr. (U.S. Patent No. 3,469,490) in view of Warren (US Patent No. 4,829,674). The Pearce Jr. reference has been discussed above. Contrary to the statement of the rejection, Pearce Jr. does not teach a nail with a head and a plug of filler material joined to the head. A nail is a driven fastener and the Pearce Jr. patent relates exclusively to mechanical fasteners. The Warren patent does disclose filler materials including fiberglass resin fillers, but the proposed combination of Pearce Jr. and Warren does not teach or suggest the attachment of a filler material to the impact surface of a driven fastener.

Claims 4 and 25 have been rejected under 35 USC 103(a) as being unpatentable over Evensen (U.S. Patent No. 5,772,379) in view of Warren (U.S. Patent No. 4,829,674). Contrary to the statement of rejection, Evensen does not teach a nail with a head having a plug of filler material attached. Evensen relates strictly to staples. Further, to the extent that Applicant's invention relates to staples (a driven fastener), Applicant's claims require that the plug of filler be attached to the impact surface of the staple. The cited Evensen reference, as discussed above, does not teach or suggest this feature. The proposed combination of Evensen and Warren does not teach or suggest joining a plug of filler material to the impact surface of a driven fastener.

Claims 4, 14 and 25 have been rejected under 35 USC 103(a) as being unpatentable over Pearce Jr. (U.S. Patent No. 3,469,490) in view of Burrell (US Patent No. 6,274,651). The deficiencies in the Pearce Jr., alone or in various combinations with secondary references, have been discussed above. The proposed combination with Burrell does not cure these deficiencies. The Burrell reference contains teaching relating to filling and fabricating, but not in the context of attaching a filling material to the impact surface of a driven fastener.

Claims 4 and 25 have been rejected under 35 USC 103(a) as being unpatentable over Evensen (U.S. Patent No. 5,772,379) in view of Burrell (6,274,651). As discussed above, the citation of filler prior art, such as Burrell, does not render obvious the attachment of a plug of filler material to the impact surface of a driven fastener.

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Summary

In light of the above amendment, consideration of the subject patent application is respectfully requested. Any deficiency or overpayment should be charged or credited to Deposit Account No. 500282.

Respectfully submitted,



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Portsmouth, NH  
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